

Engagement and Non-Engagement Letters: Helping You Avoid Costly “Misunderstandings”

When a prospective client approaches your firm with a new case, you essentially have two options: accept or decline. In either case, it’s important to put your decision in writing.

Let’s say you accept the case. Your first order of business should be drafting an Engagement Letter, which clearly defines the scope of your responsibilities and to whom you owe them. Typically created after the first conference with the client, this document sets forth the exact duties of the firm, lawyer and client, and should be signed by both a representative of the firm and the client. Here are some guidelines:

- Your engagement letter sets the parameters of the attorney-client relationship. You can define when it begins and when it ends, what happens during the process, payment terms, and even how materials received by the law firm will be stored and destroyed.
- The document should state your exact role. Are you acting as a local counsel, a national coordinating counsel for multiple liability suits, or simply handling an appeal to an intermediate court? Whatever the answer, make it clear.
- When defining your role, it is often wise to err on the narrow side. This way you can help to avert any potential malpractice suit that alleges you failed to fulfill your responsibilities in handling the case.

While engagement letters are not specifically required by ABA Model Rules, they are considered a fundamental base practice that every attorney and law firm should employ.

Now, what if you decline the case? It is equally as important to draft a Non-Engagement Letter. Inform the prospective client — in no uncertain terms — that you are not going to handle the matter you discussed. In writing the letter, consider these factors:

- The non-engagement letter should state the reason you are declining the case. For instance, it may be due to a conflict of interest or a decision based on your analysis of the case’s merit.
- If a statute of limitations applies to the case, clearly inform the prospective client that if the matter is to be pursued further with another firm, it must be done so promptly — because legal rights can expire within a specified amount of time.
- A non-engagement letter gives you the opportunity to emphasize that no advice was rendered, and that the prospective client should not rely on anything you or a member of your firm said during a preliminary conversation. This helps to avoid a potentially costly misunderstanding later.

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